
By: **Senator Brochin**

Introduced and read first time: February 20, 2004
Rules suspended
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Physicians Noneconomic Damages Reimbursement Fund**

3 FOR the purpose of establishing the Maryland Physicians Noneconomic Damages
4 Reimbursement Fund; establishing a Board of Directors of the Fund; providing
5 for the composition, terms of members, chairman, and duties of the Board;
6 requiring the Board to appoint the Executive Director of the Fund in a certain
7 manner; establishing the powers, duties, and compensation of the Executive
8 Director; providing for personnel of the Fund; establishing the purpose of the
9 Fund; providing that the Fund consists of certain fees and other money;
10 providing that the Fund is a special fund account; establishing a financial
11 management committee of the Fund; providing for certain audits of the Fund;
12 requiring certain fees to be paid by physicians and hospitals; authorizing the
13 Fund to reimburse certain insurers for certain noneconomic damages under
14 certain circumstances; defining certain terms; specifying the terms of the initial
15 members of the Board; providing for a delayed effective date; and generally
16 relating to the Maryland Physicians Noneconomic Damages Reimbursement
17 Fund.

18 BY adding to

19 Article - Courts and Judicial Proceedings
20 Section 3-2D-01 through 3-2D-12, inclusive, to be under the new subtitle
21 "Subtitle 2D. Maryland Physicians Noneconomic Damages
22 Reimbursement Fund"
23 Annotated Code of Maryland
24 (2002 Replacement Volume and 2003 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Courts and Judicial Proceedings**2 **SUBTITLE 2D. MARYLAND PHYSICIANS NONECONOMIC DAMAGES**
3 **REIMBURSEMENT FUND.**

4 3-2D-01.

5 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

7 (B) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE FUND.

8 (C) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE FUND.

9 (D) "FUND" MEANS THE MARYLAND PHYSICIANS NONECONOMIC DAMAGES
10 REIMBURSEMENT FUND.11 (E) "HOSPITAL" HAS THE MEANING STATED IN § 19-301 OF THE HEALTH -
12 GENERAL ARTICLE.13 (F) "PHYSICIAN" HAS THE MEANING STATED IN § 14-101 OF THE HEALTH
14 OCCUPATIONS ARTICLE.15 (G) "PRACTICE MEDICINE" HAS THE MEANING STATED IN § 14-101 OF THE
16 HEALTH OCCUPATIONS ARTICLE.

17 3-2D-02.

18 THERE IS A MARYLAND PHYSICIANS NONECONOMIC DAMAGES
19 REIMBURSEMENT FUND.

20 3-2D-03.

21 (A) THERE IS A BOARD OF DIRECTORS OF THE FUND.

22 (B) (1) THE BOARD CONSISTS OF SEVEN MEMBERS.

23 (2) OF THE SEVEN MEMBERS:

24 (I) SIX SHALL BE APPOINTED BY THE GOVERNOR WITH THE
25 ADVICE AND CONSENT OF THE SENATE; AND

26 (II) ONE SHALL BE THE EXECUTIVE DIRECTOR.

27 (3) EXCEPT AS PROVIDED IN § 3-2D-04(A)(3) OF THIS SUBTITLE, THE
28 EXECUTIVE DIRECTOR MAY VOTE ON ALL MATTERS BEFORE THE BOARD.29 (C) (1) THE TERM OF AN APPOINTED MEMBER IS 4 YEARS AND BEGINS ON
30 JULY 1.

1 (2) THE TERMS OF APPOINTED MEMBERS ARE STAGGERED AS
2 REQUIRED BY THE TERM PROVIDED FOR MEMBERS OF THE BOARD ON JANUARY 1,
3 2005.

4 (3) AT THE END OF A TERM, AN APPOINTED MEMBER CONTINUES TO
5 SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

6 (4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES
7 ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND
8 QUALIFIES.

9 (D) (1) THE BOARD SHALL CHOOSE A CHAIRMAN FROM AMONG ITS
10 MEMBERS.

11 (2) THE EXECUTIVE DIRECTOR MAY NOT BE THE CHAIRMAN OF THE
12 BOARD.

13 (E) A MEMBER OF THE BOARD:

14 (1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE BOARD;
15 BUT

16 (2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE
17 STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

18 (F) THE BOARD SHALL FORMULATE POLICY FOR THE FUND.

19 3-2D-04.

20 (A) (1) THE BOARD SHALL APPOINT THE EXECUTIVE DIRECTOR OF THE
21 FUND WITH THE APPROVAL OF THE GOVERNOR.

22 (2) THE EXECUTIVE DIRECTOR SERVES AT THE PLEASURE OF THE
23 BOARD.

24 (3) THE INCUMBENT EXECUTIVE DIRECTOR MAY NOT VOTE ON THE
25 CHOICE OF A SUCCESSOR.

26 (4) IF THE BOARD FAILS TO AGREE ON A SUCCESSOR, THE GOVERNOR
27 SHALL APPOINT THE SUCCESSOR.

28 (B) (1) THE EXECUTIVE DIRECTOR:

29 (I) IS THE ADMINISTRATIVE HEAD OF THE FUND; AND

30 (II) SHALL EXERCISE THE POWERS AND PERFORM THE DUTIES
31 CONFERRED ON THE FUND BY THIS SUBTITLE, EXCEPT FOR THOSE POWERS AND
32 DUTIES CONFERRED ON THE BOARD.

1 (2) THE BOARD SHALL ADVISE THE EXECUTIVE DIRECTOR ON THE
2 EXERCISE OF THE POWERS AND DUTIES CONFERRED ON THE EXECUTIVE DIRECTOR
3 BY THIS SUBTITLE.

4 (C) THE BOARD OF DIRECTORS SHALL DETERMINE THE COMPENSATION OF
5 THE EXECUTIVE DIRECTOR WITH THE APPROVAL OF THE GOVERNOR.

6 3-2D-05.

7 (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION OR
8 OTHERWISE BY LAW, THE EXECUTIVE DIRECTOR SHALL APPOINT AND REMOVE
9 STAFF OF THE FUND IN ACCORDANCE WITH THE PROVISIONS OF THE STATE
10 PERSONNEL AND PENSIONS ARTICLE.

11 (2) POSITIONS THAT THE EXECUTIVE DIRECTOR DESIGNATES WITH THE
12 APPROVAL OF THE BOARD AS TECHNICAL OR PROFESSIONAL POSITIONS ARE IN THE
13 EXECUTIVE SERVICE, MANAGEMENT SERVICE, OR ARE SPECIAL APPOINTMENTS OF
14 THE SKILLED SERVICE OR THE PROFESSIONAL SERVICE IN THE STATE PERSONNEL
15 MANAGEMENT SYSTEM.

16 (3) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE
17 EXECUTIVE DIRECTOR MAY APPOINT NECESSARY PERSONNEL DIRECTLY AS
18 EMPLOYEES OR ON A CONTRACT BASIS.

19 (B) THE EXECUTIVE DIRECTOR SHALL DETERMINE THE COMPENSATION OF
20 THE PERSONNEL OF THE FUND DESIGNATED UNDER SUBSECTION (A)(2) OF THIS
21 SECTION:

22 (1) WITH THE APPROVAL OF THE BOARD; AND

23 (2) WHEN POSSIBLE, IN ACCORDANCE WITH THE STATE PAY PLAN.

24 (C) (1) AT LEAST 45 DAYS BEFORE THE EFFECTIVE DATE OF THE CHANGE,
25 THE EXECUTIVE DIRECTOR SHALL SUBMIT TO THE SECRETARY OF BUDGET AND
26 MANAGEMENT EACH CHANGE TO THE FUND'S SALARY PLANS THAT INVOLVES
27 INCREASES OR DECREASES IN SALARY RANGES OTHER THAN THOSE ASSOCIATED
28 WITH ROUTINE RECLASSIFICATIONS AND PROMOTIONS OR GENERAL SALARY
29 INCREASES APPROVED BY THE GENERAL ASSEMBLY.

30 (2) REPORTABLE CHANGES INCLUDE CREATION OR ABOLITION OF
31 CLASSES, REGRADING OF CLASSES FROM ONE ESTABLISHED RANGE TO ANOTHER,
32 AND CREATION OF NEW PAY SCHEDULES OR RANGES.

33 (3) THE SECRETARY OF BUDGET AND MANAGEMENT SHALL:

34 (I) REVIEW THE PROPOSED CHANGES; AND

35 (II) AT LEAST 15 DAYS BEFORE THE EFFECTIVE DATE OF THE
36 PROPOSED CHANGES, ADVISE THE EXECUTIVE DIRECTOR WHETHER THE CHANGES
37 WOULD HAVE AN ADVERSE EFFECT ON COMPARABLE STATE JOBS.

1 (4) FAILURE OF THE SECRETARY OF BUDGET AND MANAGEMENT TO
2 RESPOND IN A TIMELY MANNER IS DEEMED TO BE A STATEMENT THAT THE CHANGE
3 WILL HAVE NO ADVERSE EFFECT.

4 3-2D-06.

5 (A) THE PURPOSE OF THE FUND IS TO FULLY SUBSIDIZE THE FINAL AWARDS
6 OR VERDICTS FOR NONECONOMIC DAMAGES OVER \$500,000 AGAINST DEFENDANTS
7 WHO ARE PHYSICIANS PRACTICING MEDICINE IN THE STATE.

8 (B) THE FUND CONSISTS OF:

9 (1) FEES REQUIRED TO BE PAID BY PHYSICIANS AND HOSPITALS IN
10 ACCORDANCE WITH § 3-2D-10 OF THIS SUBTITLE; AND

11 (2) ANY OTHER MONEY PROVIDED TO THE FUND BY LAW.

12 (C) (1) ALL OPERATING EXPENSES OF THE FUND SHALL BE PAID FROM THE
13 MONEYS COLLECTED BY OR FOR THE FUND.

14 (2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, MONEYS
15 AND PROPERTY AVAILABLE TO THE FUND MAY BE USED FOR THE GENERAL
16 PURPOSES OF THE FUND.

17 (II) FEES COLLECTED AND INCOME ACCRUING FROM THOSE FEES
18 MAY BE USED ONLY FOR THE REIMBURSEMENT OF NONECONOMIC DAMAGES OVER
19 \$500,000 AND FOR THE ADMINISTRATIVE EXPENSES OF THE FUND.

20 3-2D-07.

21 (A) THE ACCOUNT OF THE FUND IS A SPECIAL FUND ACCOUNT AND IS NOT A
22 PART OF THE STATE TREASURY.

23 (B) THE STATE MAY NOT PROVIDE GENERAL FUND APPROPRIATIONS TO THE
24 FUND.

25 (C) THE DEBTS AND OBLIGATIONS OF THE FUND ARE NOT A DEBT OF THE
26 STATE OR A PLEDGE OF THE CREDIT OF THE STATE.

27 3-2D-08.

28 (A) (1) A FINANCIAL MANAGEMENT COMMITTEE OF THE FUND SHALL
29 MANAGE AND INVEST ALL MONEYS COLLECTED BY OR FOR THE FUND THROUGH
30 PREMIUMS, EARNINGS FROM INVESTMENTS, OR FROM OTHER SOURCES.

31 (2) THE FINANCIAL MANAGEMENT COMMITTEE CONSISTS OF THE
32 EXECUTIVE DIRECTOR AND TWO MEMBERS OF THE BOARD WHOM THE BOARD
33 CHOOSES.

34 (B) (1) WHENEVER THE AMOUNT OF MONEYS IN THE FUND EXCEEDS THE
35 AMOUNT THAT THE EXECUTIVE DIRECTOR BELIEVES IS LIKELY TO BE REQUIRED

1 IMMEDIATELY, THE FINANCIAL MANAGEMENT COMMITTEE MAY MANAGE THE
2 EXCESS AS IT CONSIDERS APPROPRIATE AND INVEST THE EXCESS IN INVESTMENTS
3 LEGAL FOR CASUALTY INSURERS UNDER §§ 5-601 THROUGH 5-609 OF THE
4 INSURANCE ARTICLE.

5 (2) IF USE OF THE EXCESS BECOMES NECESSARY OR EXPEDIENT, THE
6 FINANCIAL MANAGEMENT COMMITTEE MAY COLLECT, SELL, OR OTHERWISE
7 REALIZE ON THE INVESTMENT AND ANY ACCRUED INTEREST.

8 3-2D-09.

9 (A) THE LEGISLATIVE AUDITOR:

10 (1) MAY CONDUCT FISCAL AUDITS AND COMPLIANCE AUDITS OF THE
11 ACCOUNTS AND TRANSACTIONS OF THE FUND EACH YEAR INSTEAD OF EVERY 2
12 YEARS; AND

13 (2) SHALL ADVISE OFFICIALS OF THE FUND WHETHER AUDITS WILL BE
14 CONDUCTED EACH YEAR OR EVERY 2 YEARS.

15 (B) (1) IF AN INDEPENDENT AUDITOR CONDUCTS A FISCAL AUDIT OF THE
16 FUND, THE LEGISLATIVE AUDITOR MAY NOT DUPLICATE THE FISCAL AUDIT FOR THE
17 SAME PERIOD.

18 (2) IF, AT THE REQUEST OF THE FUND, THE LEGISLATIVE AUDITOR
19 CONDUCTS THE FISCAL AUDIT INSTEAD OF AN INDEPENDENT AUDITOR, THE
20 LEGISLATIVE AUDITOR MAY CHARGE THE FUND FOR THE COST OF THE FISCAL
21 AUDIT.

22 (C) AN AUDIT CONDUCTED IN ACCORDANCE WITH THIS SECTION IS IN
23 ADDITION TO AND NOT INSTEAD OF ANY AUDIT OR REGULATORY AUTHORITY OF THE
24 COMMISSIONER.

25 3-2D-10.

26 (A) EACH PHYSICIAN WHO PRACTICES MEDICINE IN THE STATE SHALL PAY TO
27 THE FUND:

28 (1) FOR THE FIRST YEAR OF THE FUND, A FEE OF \$750; AND

29 (2) FOR EACH SUBSEQUENT YEAR OF THE FUND, A FEE OF \$500.

30 (B) EACH HOSPITAL LICENSED IN THE STATE SHALL PAY TO THE FUND AN
31 ANNUAL FEE OF \$10,000.

32 3-2D-11.

33 THE BOARD OF DIRECTORS SHALL COLLECT THE FEES ESTABLISHED IN §
34 3-2D-10 OF THIS SUBTITLE AND PAY THE FEES INTO THE FUND.

1 3-2D-12.

2 (A) THE MEDICAL MALPRACTICE INSURER OF A PHYSICIAN LICENSED TO
3 PRACTICE MEDICINE IN THE STATE MAY APPLY TO THE FUND FOR REIMBURSEMENT
4 FROM THE FUND FOR ANY AMOUNT IN EXCESS OF \$500,000 OF A FINAL AWARD OR
5 VERDICT FOR NONECONOMIC DAMAGES OVER \$500,000 AGAINST THE PHYSICIAN.

6 (B) FOR REIMBURSEMENT FROM THE FUND, A PHYSICIAN INSURED BY THE
7 MEDICAL MALPRACTICE INSURER MUST:

8 (1) BE DOMICILED IN THE STATE;

9 (2) OWN, LEASE, OR RENT A PRIMARY PLACE OF RESIDENCE IN THE
10 STATE AND, REGARDLESS OF THE PERSON'S DOMICILE, RESIDE IN THE STATE FOR
11 MORE THAN 1 YEAR;

12 (3) MAINTAIN A MAIN OR BRANCH OFFICE IN THE STATE; OR

13 (4) HAVE FILED AS A STATE RESIDENT FOR INCOME TAX PURPOSES.

14 (C) THE ELIGIBILITY FOR REIMBURSEMENT FROM THE FUND SHALL BE
15 CERTIFIED AT A TIME AND IN A MANNER APPROVED BY THE FUND.

16 SECTION 2. AND BE IT FURTHER ENACTED, That the terms of the initial
17 appointed members of the Board of Directors of the Fund shall expire as follows:

18 (1) two members in 2007;

19 (2) two members in 2008; and

20 (3) two members in 2009.

21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 January 1, 2005.